

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
J. FREDERICK MOTZ
UNITED STATES DISTRICT JUDGE

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March 7, 2005

Re: MDL-15863-*In re Mutual Funds Investment Litigation*

Dear Counsel:

I have reviewed your memoranda and considered your oral arguments in connection with class plaintiffs' motion to lift the discovery stay and defendants' cross-motion to extend discovery stay. Both motions will be granted in part and denied in part.

I find that the public interest would be harmed if the regulatory settlement process that is now underway as to many of the Fund defendants were to progress substantially without plaintiffs having had the opportunity to review many of the documents they are now seeking in discovery. Plaintiffs' access to the documents may assist in evaluating the worth of any potential settlements and in bringing to an efficient and economic resolution all claims arising from the allegations of late trading and market timing that have been made. I also find that denying plaintiffs access to the documents would prejudice them because of their resulting "inability to make informed decisions about . . . [their] litigation strategy in a rapidly shifting landscape." *WorldCom Inc. Securities Litigation*, 234 F. Supp. 2d 301, 305 (S.D.N.Y. 2002). This prejudice is sufficient to warrant a partial lifting of the stay imposed by the PSLRA. *Id*; *In Re Royal Ahold N.B. Securities & ERISA Litigation*, 220 F.R.D. 246, 251-52 (D. Md. 2004). However, I also find that respect for the language and purpose of the PSLRA requires some limitation on the discovery plaintiffs now seek.¹

These findings lead me to the following conclusions:

1. Because the Alger defendants are not participating in any regulatory settlement process, it cannot be said that the plaintiffs will suffer cognizable prejudice within the meaning of the PSLRA if they are presently not given access to Alger documents. Accordingly, the Alger defendants are not required to produce any documents to plaintiffs at this time. However, in order to avoid potential unnecessary delay in these proceedings, the Alger defendants are ordered now to compile all of the documents listed

¹I note that all parties agree that the PSLRA stay should not now be lifted as to the claims against the trader and broker/dealer defendants.

in paragraphs 2 and 3 of this letter for immediate production to plaintiffs in the event I ultimately deny their motions to dismiss. They also are ordered now to compile all of the documents listed in paragraph 4 of this letter for possible prompt production to plaintiffs in the event I ultimately deny their motions to dismiss.

2. The defendants in this track other than the Alger defendants are ordered now to produce to plaintiffs the following categories of documents (as defined in plaintiffs' document request):²

Document Request No. 1: Defendants should now produce to plaintiffs (as I understand the Janus defendants have already voluntarily done) all documents they have provided to the SEC that the SEC has identified for use as exhibits during administrative depositions of Fund personnel.

Document Request No. 2: Defendants should now produce to plaintiffs all documents constituting or reflecting communications between them and regulatory agencies with regard to market timing or late trading.³

Document Request No. 3: Defendants should now produce to plaintiffs all damages reports, analyses, etc. that have been produced to regulatory agencies that relate to market timing or late trading.

Document Request No. 4: Defendants should now produce to plaintiffs all documents relating to non-confidential communications with any independent distribution consultant (IDC), including investigative reports or reviews they have prepared, or that have been prepared on their behalf, concerning market timing or late trading. I am adding the proviso "non-confidential" to address the concern mentioned by counsel for MFS during oral argument.

Document Request No. 6: Defendants should now produce to plaintiffs any release, settlement or other agreement.

Document Request No. 7: Defendants should now produce to plaintiffs all insurance policies.

3. Defendants need not produce to plaintiffs at this time, in response to Document Request No. 1, all documents they have produced to regulatory agencies that relate to market timing or

²A defendant may decline to produce particular documents requested in Document Request Nos. 2, 4, and 6 on the ground of privilege or confidentiality but shall provide to plaintiffs a log of all such documents. After conferring with the defendant, plaintiffs may move to compel any document they believe is being improperly withheld on the ground of privilege or confidentiality.

³I am requiring defendants to produce slightly less than plaintiffs request in Document Request No. 2. That document request refers to "communications," rather than "documents," and by virtue of the definition of the term "communications" in the document request, it could be deemed to require defendants to create documents that do not already exist relating to communications with regulatory agencies. This caveat applies to Document Request No. 4 as well.

late trading. However, they should now compile all such documents for immediate production to plaintiffs in the event I ultimately deny their motions to dismiss. Alternatively, in order to eliminate the cost of culling through the documents it has produced to regulatory agencies, a defendant may now state its agreement to produce to plaintiffs, in the event I ultimately deny its motion to dismiss, all documents it has produced to regulatory agencies.⁴

4. Defendants need not produce to plaintiffs at this time, in response to Document Request No. 5, investigative reports or reviews they have prepared, or that have been prepared on their behalf, concerning market timing or late trading, unless the reports or reviews have been provided to an IDC. However, defendants should now compile any such reports or reviews for possible prompt production to plaintiffs in the event that I deny defendants' motions to dismiss.

5. A court has the discretion to limit discovery as to the non-PSLRA claims to permit resolution of motions to dismiss before the full cost and burden of discovery is imposed on the defendants. In exercising that discretion here, I find that in order to prevent different groups of plaintiffs from having varying amounts of information in making decisions about their litigation strategy, all plaintiffs should stand on equal footing as to preliminary discovery. Accordingly, defendants' cross-motion to extend discovery stay is granted, except to the extent that I am ordering in paragraph 2 that defendants other than the Alger defendants produce certain documents to all plaintiffs.

Despite the informal nature of this ruling, it shall constitute an Order of Court, and the Clerk is directed to docket it accordingly.

Very truly yours,

/s/

J. Frederick Motz
United States District Judge

cc: Honorable Catherine C. Blake
Honorable Andre M. Davis

⁴A third alternative a defendant may choose is to compile for immediate production to plaintiffs, in the event that I ultimately deny its motion to dismiss, a subset of the documents produced to regulatory agencies that includes all documents relating to market timing or late trading activities, but that may include other documents as well. This alternative would permit a defendant to reduce its costs by making a "rough cut" of documents to be compiled for production to plaintiffs without requiring the defendant, on the one hand, to compile *all* documents produced to regulatory agencies or, on the other hand, to determine that the subset of documents being compiled includes *only* documents relating to market timing or late trading.

Honorable Frederick P. Stamp, Jr.